

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

**DOCKET NO. 2012-393-C**

<b>IN RE:</b>	)	
	)	
<b>APPLICATION OF BIRCH TELECOM</b>	)	<b>MOTION TO AMEND</b>
<b>OF THE SOUTH, INC., AND NOW</b>	)	<b>APPLICATION</b>
<b>COMMUNICATIONS, LLC FOR</b>	)	
<b>DESIGNATION AS AN ELIGIBLE</b>	)	
<b>TELECOMMUNICATIONS CARRIER IN</b>	)	
<b>THE STATE OF SOUTH CAROLINA</b>	)	

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Pursuant to 26 S.C. Code Regs. 103-828 and 103-829 and other rules of practice and procedure of the Public Service Commission (“Commission”), Birch Telecom of the South, Inc., doing business as Birch Communications (“Birch”), and Now Communications, LLC (“Now Communications”) (collectively the “Company”), respectfully moves to be allowed to amend the Application for Designation as an Eligible Telecommunications Carrier (“ETC”) filed with the Commission in this docket on November 15, 2012, (*“Application”*) on the following grounds:

1. In Birch’s Compliance Plan approved by the Federal Communications Commission (“FCC”), Birch noted that it was reviewing whether a separate legal entity should be established to provide prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities. *See Application*, Exhibit 4, p.1, fn. 3. In that regard, Birch seeks to amend the *Application* to reflect that its prepaid wireless Lifeline service will be provided by a separate legal entity known as Now Communications. Therefore, Birch respectfully requests that ETC status be granted to Now Communications rather than Birch.

2. Subsequent to filing the *Application*, the ultimate owners of Birch decided to form Now Communications as a Georgia limited liability company to provide prepaid Lifeline services. Birch will not provide Lifeline services as an ETC in any state. Now Communications is in the process of registering with the FCC for domestic interstate authority and obtaining authorization from the FCC for the provision of international telecommunications services. Now Communications is also in the process of obtaining telecommunications authority at the state level in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Ohio, Tennessee, Texas, and Wisconsin. In addition to prepaid wireless Lifeline service, Now Communications will also provide the wireline Lifeline services currently provided by Birch and its affiliates as a non-ETC reseller in the states listed above once the appropriate regulatory approvals are obtained. Now Communications is preparing an application for a certificate of public convenience and necessity to offer local exchange and interexchange telecommunications services to be filed in South Carolina shortly. The South Carolina application will also request that certain of Birch's customers be transferred to Now Communications.

3. Now Communications will utilize the same management and day-to-day operational personnel as currently utilized by Birch. Birch's current corporate officers will also be corporate officers of Now Communications. Now Communications will be owned by the same ultimate owners of Birch, but will not be part of the Birch corporate family.

4. Sprint will provide Now Communications with the network infrastructure and wireless transmission facilities needed for Now Communications to offer service as a Mobile Virtual Network Operator. Specifically, Birch's current contract with Sprint will be assigned to Now Communications. In addition, Now Communications will rely on Birch for all other

facilities, network, back office, billing, and customer support functions necessary to provide both its Lifeline and non-Lifeline services.

5. Now Communications will utilize the same procedures and operations set forth in the Birch Compliance Plan for its provision of prepaid wireless Lifeline service, and will use the same draft application and verification forms attached to the Birch Compliance Plan. Now Communications will offer the same prepaid wireless Lifeline service plan set forth in the *Application* and will market and advertise its prepaid wireless Lifeline service in the same manner as described in the Birch Compliance Plan.

6. On December 18, 2012, Birch notified the FCC that Now Communications would comply with and adopt as its own the Compliance Plan filed by Birch and approved by the FCC on August 8, 2012. *See Exhibit 1.* The approved Compliance Plan was attached to the *Application* as Exhibit 5.

7. Birch and Now Communications also filed amendments to the pending designation petitions before the FCC previously filed by Birch to reflect Now Communication's adoption of the Birch Compliance Plan and to request that Now Communications, not Birch, be the entity designated as an eligible telecommunications carrier. The FCC issued a notice on December 20, 2012, in which it indicates that Birch's approved Compliance Plan will also apply to Now Communications. *See Exhibit 2, fn. 1.*

8. The Company would note that Birch has published the Notice of Filing and Hearing which included the use of the trade name "NOW Communications." Since the public has been given notice of the use of the new corporate entity's name, we respectfully request that NOW Communications not be required to publish another notice.

9. The deadline for intervention in this docket was December 28, 2012. The S.C. Office of Regulatory Staff (“ORS”) is the only intervenor in this docket. ORS has indicated that it does not object to the motion. The Company does not seek an extension of any pre-filing deadlines or the hearing date at this time.

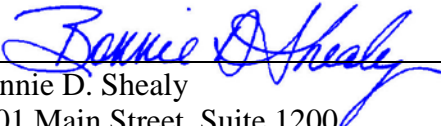
10. The Company seeks to amend the *Application* to reflect the changes outlined above. Attached and incorporated by reference as **Exhibit 3** is the Amended Application for Designation as an Eligible Telecommunications Carrier for Lifeline Support (“*Amended Application*”).

For the reasons outlined above, we respectfully request that the Commission allow the Company to amend the *Application*. We also request that no additional publication of notice be required and such other relief as the Commission deems appropriate.

Dated this 7<sup>th</sup> day of January, 2013.

**Robinson, McFadden & Moore, P.C.**

By:

  
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*Attorneys for Birch Telecom of the South, Inc. and  
Now Communications, LLC*

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**DOCKET NO. 2012-393-C**

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<b>TELECOMMUNICATIONS CARRIER IN</b>	)	
<b>THE STATE OF SOUTH CAROLINA</b>	)	

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**EXHIBITS**

Exhibit 1	Birch and Now Communications letter to FCC dated December 18, 2012
Exhibit 2	Wireline Competition Bureau Seeks Comment on Petitions for Designation as a Low-Income Eligible Telecommunications Carrier filed by NOW Comm, Zing PCS, LTS, Odin Wireless and TX Mobile, FCC DA 12-2068, December 20, 2012
Exhibit 3	Amended Application

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<b>THE STATE OF SOUTH CAROLINA</b>	)	

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**EXHIBIT 1**

**Birch and Now Communications, LLC's letter to  
FCC dated December 18, 2012**

**CAHILL GORDON & REINDEL LLP**

SUITE 950

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WASHINGTON, D.C. 20006-1181

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ANGELA F. COLLINS | 202-862-8930 | acollins@cgrdc.com

December 18, 2012

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: WC Docket Nos. 09-197, 11-42**

Dear Secretary Dortch:

Birch Communications, Inc. (“Birch”) and Now Communications, LLC (“Now Comm”), by their attorneys, respectfully notify the Federal Communications Commission (“Commission”) that Now Comm will comply with and adopt as its own the Compliance Plan filed by Birch and approved by the Commission on August 8, 2012.<sup>1</sup>

Now Comm is a Georgia limited liability company, which is in the process of registering with the Commission for domestic interstate authority and obtaining authorization from the Commission for the provision of international telecommunications services. Now Comm is also in the process of obtaining telecommunications authority at the state level in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Ohio, South Carolina, Tennessee, Texas, and Wisconsin. In addition to prepaid wireless Lifeline service, Now Comm will also provide the wireline Lifeline services currently provided by Birch and its affiliates as a non-ETC reseller in the 18 above-listed states.<sup>2</sup>

Sprint will provide Now Comm with the network infrastructure and wireless transmission facilities needed for Now Comm to offer service as a Mobile Virtual Network Operator (“MVNO”). Specifically, Birch’s current contract with Sprint will be assigned to Now Comm.<sup>3</sup> In addition, Now Comm will rely on Birch for all other facilities, network, back office, billing, and customer support functions necessary to provide both its Lifeline and non-Lifeline services.

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<sup>1</sup> WC Docket Nos. 09-197 and 11-42, *Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile*, Public Notice, DA 12-1286 (rel. Aug. 8, 2012); *see also* Lifeline Compliance Plans & ETC Petitions, <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions>.

<sup>2</sup> Petition at 2 (explaining Birch’s provision of Lifeline services as a non-ETC reseller in 18 states). Birch and Now Comm will obtain any necessary regulatory approvals to execute the transfer of existing Birch customers from Birch to Now Comm.

<sup>3</sup> Petition at 2 (explaining Birch’s relationship with Sprint).

Birch noted in the Compliance Plan that it was reviewing whether a separate legal entity should be established for the provision of prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities.<sup>4</sup> In that regard, Birch hereby notifies the Commission that the prepaid wireless Lifeline service will be provided by a separate legal entity known as Now Communications, LLC.

Now Comm will implement and comply with the Birch Compliance Plan approved by the Commission on August 8, 2012,<sup>5</sup> and hereby adopts the Birch Compliance Plan as its own. Now Comm will utilize the same procedures and operations set forth in the Birch Compliance Plan for its provision of prepaid wireless Lifeline service, and will use the same draft application and verification forms attached to the Birch Compliance Plan. Now Comm will offer the same prepaid wireless Lifeline service plan set forth in the Birch Compliance Plan, and will market and advertise its prepaid wireless Lifeline service in the same manner as described in the Birch Compliance Plan. A copy of the Birch Compliance Plan adopted by Now Comm is attached. Birch and Now Comm have also filed amendments to the pending designation petitions previously filed by Birch to reflect Now Comm's adoption of the Birch Compliance Plan and to request that Now Comm, not Birch, be the entity designated as an eligible telecommunications carrier.<sup>6</sup>

Now Comm will utilize the same management and day-to-day operational personnel as currently utilized by Birch. Birch's current corporate officers will also be corporate officers of Now Comm. Now Comm will be owned by the same ultimate owners of Birch, but will not be part of the Birch corporate family.<sup>7</sup>

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<sup>4</sup> Compliance Plan at n.3.

<sup>5</sup> WC Docket Nos. 09-197 and 11-42, *Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless, and TAG Mobile*, Public Notice, DA 12-1286 (rel. Aug. 8, 2012); *see also* Lifeline Compliance Plans & ETC Petitions, <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions>.

<sup>6</sup> On April 27, 2012, Birch filed a petition for designation as an eligible telecommunications carrier ("ETC") for Lifeline service only for the states of Alabama, Florida, North Carolina, and Tennessee. On November 29, 2012, Birch filed a petition for designation as an ETC for Lifeline service only for the state of Texas. On December 18, 2012, Birch and Now Comm filed amendments to these pending petitions to reflect Now Comm's adoption of the Birch Compliance Plan and the parties' request that ETC status be granted to Now Comm rather than Birch. Birch will not provide Lifeline services as an ETC in any state.

<sup>7</sup> Specifically, Birch Capital, LLC (a Georgia limited liability company) holds a 100% ownership interest in Now Comm. The current owners of Birch (Holcombe Green and R. Kirby Godsey, which in combination hold a 98% interest in Birch) own approximately 90% of Birch Capital, LLC, with the remaining percentage owned by Vincent Oddo, the Chief Executive Officer of both Birch and Now Comm. *See* Birch Compliance Plan at 4-5 (discussing ownership of Birch).



Please contact the undersigned if you have any questions regarding this matter

Respectfully submitted,

A handwritten signature in cursive script that reads "Angela Collins".

Angela F. Collins  
Counsel to Birch Communications, Inc. and  
Now Communications, LLC

Attachment

cc: Garnet Hanly (via electronic mail)

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**EXHIBIT 2**

**Wireline Competition Bureau Seeks Comment on  
Petitions for Designation as a Low-Income Eligible Telecommunications Carrier  
filed by NOW Comm, Zine PCS, LTS, Odin Wireless and TX Mobile,**

**FCC DA 12-2068, December 20, 2012**



# PUBLIC NOTICE

**Federal Communications Commission**  
**445 12<sup>th</sup> St., S.W.**  
**Washington, D.C. 20554**

**News Media Information 202 / 418-0500**  
**Internet: <http://www.fcc.gov>**  
**TTY: 1-888-835-5322**

**DA 12-2068**

**Release Date: December 20, 2012**

**WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PETITIONS FOR  
DESIGNATION AS A LOW-INCOME ELIGIBLE TELECOMMUNICATIONS CARRIER  
FILED BY NOW COMM, ZING PCS, LTS, ODIN WIRELESS AND TX MOBILE**

**WC Docket No. 09-197**

**Comment Date: January 22, 2013**

**Reply Comment Date: February 5, 2013**

The Wireline Competition Bureau seeks comment on petitions filed by Birch Communications, Inc. (Birch) and Now Communications, LLC (collectively, Now Comm),<sup>1</sup> FLATEL Wireless, Inc. dba ZING PCS (ZING PCS),<sup>2</sup> LTS of Rocky Mount, LLC (LTS),<sup>3</sup> Prepaid Wireless Retail, LLC dba Odin

<sup>1</sup> Birch Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only in the State of Texas, WC Docket No. 09-197 (filed Nov. 29, 2012); Amendment to Birch Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only in the State of Texas, WC Docket No. 09-197 (filed Dec. 18, 2012) (collectively, Now Comm Amended Petition) (amending the petition to reflect that Birch's prepaid wireless Lifeline service will be provided by a separate legal entity known as Now Communications, LLC and subject to Birch's compliance plan). *See also* Letter from Angela F. Collins, Counsel to Birch and Now Comm, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 09-197, 11-42 (filed Dec. 18, 2012) (Now Comm explains that it will adopt and adhere by Birch's approved Compliance Plan and its business structure). Now Comm will have the same owners as Birch, including the same management and day-to-day operational personnel as currently utilized by Birch. *See* Now Comm Amended Petition at 2-3.

The Wireline Competition Bureau has approved Birch's compliance plan, which will also apply to Now Comm. *See Wireline Competition Bureau Approves the Compliance Plans of Birch Communications, Boomerang Wireless, IM Telecom, Q Link Wireless and TAG Mobile*, WC Docket Nos. 09-197 and 11-42, 27 FCC Rcd 9184 (Wireline Comp. Bur. 2012); *see also Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6816, para. 380 (2012) (*Lifeline Reform Order*).

<sup>2</sup> FLATEL Wireless, Inc. dba ZING PCS Petition for Limited Designation as an Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, the District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee, Texas and Virginia, WC Docket No. 09-197 (filed Dec. 14, 2012) (ZING PCS Petition). ZING PCS has a compliance plan pending with the Commission and may not be designated as an ETC until its plan has been approved by the Wireline Competition Bureau. *See* FLATEL Wireless, Inc. dba ZING PCS Amended Compliance Plan, WC Docket Nos. 09-197 and 11-42 (filed Nov. 14, 2012); *see also, Lifeline Reform Order*, 27 FCC Rcd at 6816, para. 380.

<sup>3</sup> LTS of Rocky Mount, LLC Petition for Limited Designation as an Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, the District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee and Virginia, WC Docket No. 09-197 (filed Oct. 31, 2012) (LTS Petition). LTS has a compliance plan pending with the Commission and may not be designated an ETC until its plan has been approved by the Wireline Competition Bureau. *See* LTS of Rocky Mount, LLC Compliance Plan, WC Docket Nos. 09-197 and 11-42 (filed Oct. 31, 2012); *see also, Lifeline Reform Order*, 27 FCC Rcd at 6816, para. 380.

Wireless (Odin Wireless),<sup>4</sup> and TX Mobile, LLC (TX Mobile),<sup>5</sup> for limited designation as an eligible telecommunications carrier (ETC) for the provision of Lifeline service. LTS and TX Mobile each seek designation as an ETC for the limited purpose of offering Lifeline service in Alabama, Connecticut, Delaware, District of Columbia, Florida, New Hampshire, North Carolina, New York, Tennessee and Virginia.<sup>6</sup> ZING PCS and Odin Wireless each seek designation as an ETC for the limited purpose of offering Lifeline service in Alabama, Connecticut, Delaware, District of Columbia, Florida, New Hampshire, North Carolina, New York, Tennessee, Texas and Virginia. Now Comm seeks ETC designation for the limited purpose of offering Lifeline service in Texas.<sup>7</sup>

Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).<sup>8</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

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<sup>4</sup> Prepaid Wireless Retail, LLC dba Odin Wireless Petition for Limited Designation as an Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, the District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee, Texas and Virginia, WC Docket No. 09-197 (filed Dec. 10, 2012) (Odin Wireless Petition). Odin Wireless has a compliance plan pending with the Commission and may not be designated an ETC until its plan has been approved by the Wireline Competition Bureau. See Prepaid Wireless Retail, LLC dba Odin Wireless Compliance Plan, WC Docket Nos. 09-197 and 11-42 (filed Dec. 10, 2012); see also, *Lifeline Reform Order*, 27 FCC Rcd, at 6816, para. 380.

<sup>5</sup> TX Mobile, LLC Petition for Limited Designation as an Eligible Telecommunications Carrier in Alabama, Connecticut, Delaware, the District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee and Virginia, WC Docket No. 09-197 (filed Nov. 26, 2012) (TX Mobile Petition). TX Mobile has a compliance plan pending with the Commission and may not be designated an ETC until its plan has been approved by the Wireline Competition Bureau. See TX Mobile, LLC, Compliance Plan, WC Docket Nos. 09-197 and 11-42 (filed Oct. 18, 2012); see also, *Lifeline Reform Order*, 27 FCC Rcd at 6816, para. 380.

<sup>6</sup> ZING PCS Petition at 1-2; LTS Petition at 1; Odin Wireless Petition at 1; TX Mobile Petition at 1.

<sup>7</sup> Now Comm Amended Petition at 1-3.

<sup>8</sup> See 47 CFR §§ 1.415, 1.419; *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>9</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

For further information, please contact Divya S. Shenoy, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or TTY (202) 418-0484.

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<sup>9</sup> 47 C.F.R. §§ 1.1200 *et seq.*